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Directive 86-26: Rental Deduction (Non-Residents)

Discussion: Massachusetts law allows non-resident taxpayers to take the deductions and exemptions provided in section 3B of chapter 62 in computing their Part B taxable income. G.L. c. 62, § 5A(a). Section 3B(a)(9) provides that an individual who pays rent for his or her principal residence is entitled to a deduction equal to fifty (50) percent of the rent paid if such residence is located in Massachusetts. The deduction may not exceed \$2,500 for an individual or for a husband and wife.

Generally, the Massachusetts residence of non-resident taxpayers will not be their principal residence for purposes of the rental deduction. Their Massachusetts residence, however, will be their principal residence if they have no family home or other dwelling to which they normally return or to which they intend to return in the future. Thus, if non-resident taxpayers maintain two residences, one located in Massachusetts and one located in their state of domicile, their Massachusetts residence will not be their principal residence. 830 CMR 62.40(2).

The following three fact patterns illustrate how the rental deduction applies to non-residents.

Facts 1: Taxpayer Adams and his family are domiciled in New Hampshire and own their own home in that state. During the taxable year, Adams secures employment in Massachusetts and rents an apartment in the Commonwealth, where he stays during the week. The rest of the Adams family, however, continues to reside in the family home in New Hampshire.

Issue 1: Is Adams, a non-resident who rents an apartment in Massachusetts but whose family continues to live in New Hampshire, entitled to the rental deduction on his Massachusetts non-resident return?

Directive 1: Adams' Massachusetts rented residence is not his principal residence because he has a family home to which he normally returns. Adams is not entitled to claim the rental deduction on his Massachusetts non-resident return, Form 1-NR.

Facts 2: Taxpayer Baker is a student at the University of Massachusetts. Her family is domiciled in Connecticut. During the school year, she lives in an apartment in Amherst, has a part-time job there and pays her own rent. When not in school, she resides with her family in Connecticut. She intends to return to Connecticut upon graduation.

Issue 2: Is Baker, a student renting an apartment in Massachusetts while maintaining her Connecticut domicile, entitled to the rental deduction on her Massachusetts non-resident return?

Directive 2: Baker's Massachusetts residence is not her principal residence for purposes of the rental deduction because she has a family home to which she normally returns. Baker is not entitled

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to claim the rental deduction on her Massachusetts non-resident return, Form 1-NR.

Facts 3: Taxpayer Cooper is a single man who is domiciled in Vermont. Although his parents also live in Vermont he is independent of them and has maintained his own residence, a rented apartment, for the past 10 years. Cooper secures temporary employment in Massachusetts. He surrenders his apartment in Vermont and rents an apartment in the Commonwealth for a period to last the length of his employment. Upon termination of his employment Cooper intends to return to Vermont.

Issue 3: Is Cooper, a non-resident who temporarily rents an apartment in the Commonwealth after surrendering his home in Vermont, entitled to the rental deduction on his non-resident return?

Directive 3: Cooper's Massachusetts residence is his principal residence because it is his sole residence and he has no family home in his state of domicile to which he normally returns or to which he intends to return. Cooper is entitled to claim the rental deduction on his Massachusetts non-resident return, Form 1-NR, in the amount of 50% of rent paid, not to exceed \$2,500.

Reference: G.L. c. 62, §§ 3B(a)(9); 5A(a); 830 CMR 62.40(2).

/s/Ira A. Jackson
Ira A. Jackson
Commissioner of Revenue

31 December 1986

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This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.